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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Applicant: Walker) Art Unit: 3763
Serial No.: 09/939,239) Examiner: Desanto
Filed: August 24, 2001) 001/017 (1-3) USA
) January 12, 2008
) 750 B STREET, Suite 3120
) San Diego, CA 92101
)

REPLY BRIEF

Commissioner of Patents and Trademarks
Washington, DC 20231

Dear Sir:

This Reply brief responds to the Examiner's dated January 7, 2008 - almost three years after the appeal brief was filed.

Appellant will do its best to respond to the Answer but given the Answer's exceptionally poor grammar to the point of being nearly incomprehensible, Appellant reserves the right to amend and expand this brief should clarification be forthcoming.

"The name of the game is the claim". The examiner insists that both primary references (the heart-dwelling cardiac output catheter of Williams and the aorta-dwelling cardioplegia catheter of Bresnahan et al.) are "central venous lines" as claimed by the expedient of dismissing "central venous line" as mere intended use. But this is no mere intended use. Claim 5, for example, ties this recitation to specific structure, i.e., an

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elongate structure configured for establishing central venous access. The examiner can't find a real central line reference to reject the claims and so must illegitimately resort to catheters that aren't central venous lines.

Furthermore, there remains zero evidence of record that the skilled artisan would mistake, for example, an arterial catheter used to stop the heart (Bresnahan et al.) or a heart-dwelling catheter to measure cardiac output (Williams) with a central venous line, which is important to the law if not the conferees since MPEP §2111.01 requires that claims must be construed as the skilled artisan construes them.

The examiner continues to insist that a catheter flushed with salt structurally is no different than one that is not flushed with salt when a flushed catheter must have salt residue remaining in it. Appellant will not belabor this point further except to note that references which do not teach or suggest a saline flush cannot possibly result in structure in which such a flush must be executed.

With respect to certain dependent claims, the Answer for the first time makes specific citations to various points in the references, alleging that the dependent claim limitations are there. Do not be fooled. Herewith an evisceration of what almost appears to be bad faith allegations on the part of the conferees:

Claim 8 (injection caps)

On the top of page 8 of the Answer the examiner and two SPEs allege that Williams, col. 11, lines 47-51 and Bresnahan, col. 11, lines 5-28 teach injection caps. Wrong. Williams, col. 11, lines 47-51 teaches liquid transfer fittings that mate with injection apparatus (syringes). A liquid transfer fitting must be hollow and cannot be a cap. A syringe is not a cap. No evidence has been adduced of record that the skilled artisan would regard a syringe or a Luer fitting to be a cap.

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Bresnahan, col. 11, lines 5-28 likewise teaches a Y-fitting (which is hollow and thus not a cap) that terminates in a barb fitting for engaging a pump (not a cap) and a Luer fitting "for monitoring perfusion pressure, withdrawing liquid samples or injecting medications", lines 10-12. None of these functions can be executed with a cap on the fitting. On a positive note, by making things up in the Answer about what the references teach, the virtue of consistency in the present examination is preserved.

Claim 27 (balloon length 55mm-60mm)

Lines 6 and 7 of page 8 of the Answer alleges that Williams, col. 5, lines 47-56 "discloses balloon length". Indeed it does - but not the length claimed (the pointed-to part of Williams discloses 6 cm to 10 cm while Claim 27 recites 55mm-60mm).

Claim 30 (three balloons disposed in a consecutive order with specific balloon diameters)

The Answer alleges on page 8, lines 8 and 9 that Bresnahan discloses "balloon order and diameter" at col. 18, lines 6-40. False. Claim 30 requires three balloons in a consecutive order: the first balloon having a diameter of approximately 8-12 mm, a second balloon having a diameter of approximately 5-9 mm, and a third balloon having a diameter of approximately 4-6 mm. In contrast, the cited part of Bresnahan discloses two balloons (822, 824) that have diameters of between 1.5 cm and 4.0 cm (line 22 of col. 18). But again, the Answer possesses the virtue of consistency, because the conferees get both the number of balloons *and* their sizes wrong, in the latter case, by a factor of ten.

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Respectfully submitted,


John L. Rogitz
Registration No. 33,549
Attorney of Record
750 B Street, Suite 3120
San Diego, CA 92101
Telephone: (619) 338-8075

JLR:jg

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